(10)

No. 86-104

Supreme Court, U.S.
FILED
JAN 8 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1986

THE BOARD OF AIRPORT COMMISSIONERS OF THE CITY OF LOS ANGELES, *et al.*,

Petitioners,

v.

JEWS FOR JESUS, INC., *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA, INC., AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

DAVID M. LIBERMAN
9806 Washington Boulevard
Culver City, California 90232
(213) 204-0488

Attorney for Amicus Curiae International Society for Krishna Consciousness of California, Inc.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

TABLE OF CONTENTS

	Page
INTEREST OF THE AMICUS	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. RESOLUTION NO. 13787 IS UNCERTAIN, AMBIGUOUS AND SPECULATIVE, AND LACKS THE FORCE OF LAW. FOR THIS REASON, JUDICIAL REVIEW IS NOT APPROPRIATE AT THE PRESENT TIME	4
A. History And Background Of Resolution No. 13787	6
B. The Present Case Is Nonjusticiable	8
II. A DECISION ON THE FEDERAL PUBLIC FORUM DOCTRINE WILL VIOLATE THE LONG-ESTABLISHED RULE OF AVOIDING FEDERAL CONSTITUTIONAL ADJUDICATION WHERE NONFEDERAL GROUNDS FOR DECISION ARE AVAILABLE	13
A. The Public, Non-rented Portions of LAX Are A Public Forum Under Article I, Section 2 Of The California Constitution	13
1. LAX Is A Public Forum	14
2. First Amendment Expression Is Compatible With The Intended Use of LAX	21
B. The District Court And Court Of Appeals Were Remiss In Deciding The Federal Constitutional Issue Prior To Considering California Public Forum Doctrine	22
CONCLUSION	28
APPENDIX A	App. 1
APPENDIX B	App. 14

TABLE OF AUTHORITIES

Cases	Page
Abbott Laboratories v. Gardner, 387 U.S. 136 (1967)	5, 9, 10, 11, 12
Alascom, Inc. v. F.E.C., 727 F.2d 1212 (D.C.Cir. 1984)	12
Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936)	11, 24
Babbitt v. United Farmworkers National Union, 442 U.S. 289 (1979)	10
Bender v. Williamsport Area School District, 106 S.Ct. 1326 (1986, No. 84-773)	23
Bigelow v. Virginia, 421 U.S. 809 (1975)	13
California Bankers Association v. Schultz, 416 U.S. 21 (1974)	12
Carreras v. City of Anaheim, 768 F.2d 1039 (9th Cir. 1986)	15, 17, 20, 21
City of Mesquite v. Aladdin's Castle, 455 U.S. 283 (1982)	25, 26, 28
Doe v. Bolton, 410 U.S. 179 (1974)	12
Epperson v. Arkansas, 393 U.S. 97 (1968)	12
FCC v. Pacifica Foundation, 438 U.S. 726 (1978)	13
Gonzales v. Superior Court, 180 Cal.App.3d 1116, 226 Cal.Rptr. 164 (1986)	14, 19, 22
Grayned v. City of Rockford, 408 U.S. 104 (1972)	20
Guardianship of Roe, 383 Mass. 415, 421 N.E.2d 40 (1981)	27
Gulf Oil v. Bernard, 452 U.S. 89 (1981)	23
Hagans v. Lavine, 415 U.S. 528 (1974)	24, 26

TABLE OF AUTHORITIES—Continued

Page

In Re Hoffman, 67 Cal.2d 845, 434 P.2d 353, 64 Cal.Rptr. 97 (1967) ..... *passim*

In Re Lane, 71 Cal.2d 872, 457 P.2d 561, 79 Cal. Rptr. 789 (1969) 19

International Longshoremen's and Warehousemen's Union, Local 37 v. Boyd, 347 U.S. 222 (1954) 10

International Society For Krishna Consciousness v. Barber, 650 F.2d 430 (2d Cir. 1981) 2

International Society for Krishna Consciousness v. City of Los Angeles, Nos. CV-83-5229-ER, CV-84-0045-ER (June 29, 1984) 3, 6, 7, 8, 12

Jean v. Nelson, 105 S.Ct. 2992 (1985) (No. 84-5240) 23

Linmark Associates v. Willingboro, 431 U.S. 85 (1977) 13

Lloyd v. Tanner Corp., 407 U.S. 551 (1972) 22

Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U.S. 270 (1941) 7

Metromedia v. City of San Diego, 453 U.S. 490 (1981) (plurality opinion) 13

Mills v. Rogers, 457 U.S. 291 (1982) 26, 27, 28

Minnick v. California Dept. of Corrections, 452 U.S. 105 (1981) 26

Owen Equipment and Erection Co. v. Kroeger, 547 U.S. 365 (1978) 23

Pacific Gas and Electric Co. v. State Energy Resources Conservation & Development Commission, 461 U.S. 190 (1983) 5

TABLE OF AUTHORITIES—Continued

Page

People v. Fogelson, 21 Cal.3d 158, 577 P.2d 677, 145 Cal.Rptr. 542 (1979) 2, 18

Poe v. Ullman, 367 U.S. 497 (1961) 5, 11

Prisoners Union v. California Department of Corrections, 135 Cal.App.3d 930, 185 Cal.Rptr. 634 (1982) 15, 18, 19

PruneYard Shopping Center v. Robins, 447 U.S. 74 (1981) 27

Regional Rail Reorganization Cases, 419 U.S. 102 (1974) 5

Rescue Army v. Municipal Court of Los Angeles, 331 U.S. 549 (1947) 9

Robins v. PruneYard Shopping Center, 23 Cal.3d 899, 592 P.2d 341, 153 Cal.Rptr. 854 (1979) *aff'd sub nom. PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980) 14, 15, 18, 19

Siler v. Louisville & Nashville R. Co., 213 U.S. 175 (1909) 23, 24, 25, 26

Socialist Labor Party v. Gilligan, 406 U.S. 583 (1972) 9

Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975) 13

Spector Motor Service, Inc. v. McLaughlin, 323 U.S. 101 (1944) 25

Steffel v. Thompson, 415 U.S. 452 (1974) 12

Sussli v. City of San Mateo, 120 Cal.App.3d 1, 173 Cal.Rptr. 781 (1981) 19

Thomas v. Union Carbide Agricultural Co., 105 S.Ct. 3325 (1985) (No. 84-497) 5

Three Affiliated Tribes v. Wold Engineering, 467 U.S. 138 (1984, No. 82-629) 28

TABLE OF AUTHORITIES—Continued

Page

Toilet Goods Association v. Gardner, 387 U.S. 158 (1967) 12

U.C. Nuclear Weapons Labs Conversion Project v. Lawrence Livermore Laboratory, 154 Cal. App.3d 1157, 201 Cal.Rptr. 837 (1984) 14, 15, 18, 19, 20

United Mine Workers v. Gibbs, 383 U.S. 715 (1966) 26

United States v. Hastings, 296 U.S. 188 (1935) 28

Wilson v. Superior Court, 13 Cal.3d 652, 532 P.2d 116, 119 Cal.Rptr. 468 (1975) 14

Wolin v. Port Authority, 392 F.2d 83 (2d Cir.) *cert. denied*, 393 U.S. 940 (1968) 17

Younger v. Harris, 401 U.S. 37 (1971) 10

Zemel v. Rusk, 381 U.S. 1 (1965) 12

CONSTITUTIONS AND CHARTERS

Cal. Const. art. I, section 2 ..... 4, 13, 14

Los Angeles City Charter, Article XXIX 7, 8

U.S. Const. amend. I ..... *passim*

BOOKS AND TREATISES

13A C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure*, § 1352 (1984) 9

Kalven, *The Concept of the Public Forum*, Cox v. Louisiana, 1965 S.Ct. Rev. 1 22

T. Emerson, *Toward A Theory of The First Amendment* (1966) 22

No. 86-104

In The

Supreme Court of the United States

October Term, 1986

THE BOARD OF AIRPORT COMMISSIONERS OF THE CITY OF LOS ANGELES, *et al.*,

Petitioners,

v.

JEWS FOR JESUS, INC., *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA, INC., AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

INTEREST OF THE AMICUS

This brief *amicus curiae* is submitted in suport of the respondents by the International Society for Krishna Consciousness of California, Inc. (ISKCON), a not-for-profit religious corporation in Los Angeles, California. The brief is filed with the consent of the parties, as pro-

vided by the rules of this Court. Letters confirming the consent of the parties have been or will be filed with the clerk.

Members of ISKCON adhere to the principles of *Gaudiya Vaishnavism*, or Krishna Consciousness, which, as a central tenet of its theology and beliefs requires its followers to regularly venture into public places for the purposes of distributing religious literature, soliciting funds to support the religion, and encouraging members of the public to participate in various Krishna Consciousness activities. Known in the sanskrit language as *sankirtan*, this activity lies at the core of the Krishna Consciousness religion, and is its very life blood. *See International Society for Krishna Consciousness v. Barber*, 650 F.2d 430, 442-43 (2d Cir. 1981).

Members of ISKCON have a deep-rooted, long-standing interest in the status of Los Angeles International Airport (LAX) as a public forum. For over 15 years, they have practiced *sankirtan* in the interior, non-rented public areas of the airport, and have an intimate familiarity with the history and usage of LAX as a situs for the exercise of First Amendment rights. *See, e.g., People v. Fogelson*, 21 Cal.3d 158, 577 P.2d 677, 145 Cal.Rptr. 542 (1979).

Amicus is also conversant with the background and history of Resolution No. 13787, which seeks to prohibit all First Amendment activities, including speech, proselytization, and literature distribution, from the interior portions of the airport. Of particular significance to the present case, Amicus were recently involved in a state and federal constitutional challenge to the validity of Resolution No. 13787, which was dismissed by the federal district

court for want of subject matter jurisdiction. *International Society for Krishna Consciousness v. City of Los Angeles*, Nos. CV-83-5229-ER, CV-84-0045-ER (June 29, 1984) (Appendix A) [hereinafter cited as *ISKCON v. Los Angeles*].[01]

ISKCON thus has a critical interest in the outcome of the present case. If LAX is deemed to be a non-public forum, major portions of publicly owned airports, the principal transportation centers for the United States and the world, will, for the first time with judicial sanction be declared speech-free zones. Such a result would be disastrous for fledging organizations and religions such as ISKCON, whose very existence may turn on access to such public facilities as LAX.

———o———

SUMMARY OF ARGUMENT

Federal courts are obligated to avoid deciding constitutional questions both where the controversy between the parties is not ripe for review and where nonfederal grounds are available for decision. Each of these circumstances is present here.

First, the history and background of Resolution No. 13787 reveals that the resolution lacks the force of law. Specifically, as confirmed by federal district court decision involving Amicus herein, without formal approval by the Los Angeles City Council, the resolution is unenforceable. Hence, the scope and application of the resolution is con-

---

[01]The opinion in *ISKCON v. Los Angeles* appears as Appendix A to this brief, and is cited to in the form "App."

tingent, remote and speculative, and the present case is not yet ripe for review.

Second, regardless of whether the public terminals of LAX area are a public forum under the Federal Constitution, they are certainly so under the Liberty of Speech Clause of the California Constitution, article I, section 2. The district court and court of appeals thus erred in bypassing the readily available nonfederal ground in favor of reaching the merits of the federal constitutional question.

Important policy concerns underlying and emanating from Article III strongly counsel the decision below should be vacated, and the case remanded to the court of appeals with instructions for the action to be dismissed for lack of ripeness or, in the alternative, for consideration of the state constitutional issue.

ARGUMENT

I.

RESOLUTION NO. 13787 IS UNCERTAIN, AMBIGUOUS AND SPECULATIVE, AND LACKS THE FORCE OF LAW. FOR THIS REASON, JUDICIAL REVIEW IS NOT APPROPRIATE AT THE PRESENT TIME.

A serious question exists as to whether under local law Resolution No. 13787 is enforceable, or whether it is merely a horatory expression of the airport board's predilictions. The answer to this question is crucial to the present controversy, because the ripeness doctrine prevents federal courts from deciding theoretical or abstract ques-

tions that do not yet have a concrete impact on the parties. *See Abbott Laboratories v. Gardner,* 387 U.S. 136, 148-49 (1967); *accord, Thomas v. Union Carbide Agricultural Products Co.,* 105 S.Ct. 3325, 3333 (1985) (No. 84-497); *Pacific Gas and Electric Co. v. State Energy Resources Conservation & Development Commission,* 461 U.S. 190, 200 (1983).[02]

"[R]ipeness is peculiarly a question of timing." *Regional Rail Reorganization Cases,* 419 U.S. 102, 140 (1974). The doctrine considers the dual factors of "fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration" *Abbott Laboratories,* 387 U.S. at 149, in determining whether a particular issue is fit for review.

Here, these factors, when viewed in the context of the history and background of Resolution No. 13787, strongly indicate that judicial review of the present controversy is, for two primary reasons, inappropriate: (1) the injury complained of—purported enforcement of Resolution No. 13787 through some form of civil adjudication—is too contingent and remote to justify present adjudication; and (2) the parties have not and will not suffer any appreciable hardships by the postponement or declining of judicial review.

---

[02]The ripeness doctrine has its roots in both the Article III "case or controversy" requirement, and in discretionary reasons of policy for refusing to exercise existing power. *See Regional Rail Reorganization Act Case,* 419 U.S. 102, 138 (1974); *Poe v. Ullman,* 367 U.S. 497, 502-505 (1961).

A. History And Background Of Resolution No. 13787.

Both issues that petitioners seek to have resolved in this case regarding the status of LAX as a public forum arise only as a result of the passage of Resolution No. 13787 by the Board of Airport Commissioners on July 13, 1983.

The present case was filed approximately one year after passage of the resolution, on July 17, 1984. Less than three weeks earlier, however, the United States District Court for the Central District of California had found in parallel litigation challenging the same resolution that "whether the resolution violates the First Amendment is not an actual case or controversy," and that "[t]here is not sufficient adversity between the parties to make determination of the federal constitutional question appropriate." *ISKCON v. Los Angeles*, App. 10.[03]

The district court stated:

> [T]he Los Angeles City Charter provides that the airport board 'shall have power . . . to make and en-

---

[03] *ISKCON v. Los Angeles* was filed in the California Superior Court on July 18, 1983, and was removed on August 12, 1983. A first amended complaint was filed on October 24, 1983, seeking a declaration that Resolution No. 13787 was unconstitutional and an injunction against its enforcement. On January 5, 1984, the City of Los Angeles filed a second lawsuit against ISKCON and four other organizations. The City asked for a declaration that the resolution was constitutionally valid and an injunction forbidding the five named organizations from violating it. The two actions were consolidated.

The city's suit was dismissed for want of subject matter jurisdiction in that the claim for a declaration that the resolution was constitutional did not constitute a federal question. *ISKCON v. Los Angeles*, App. 3-6. It is, however, the court's ruling on the action by ISKCON—the suit that was removed from state court—that is of particular relevance here.

> force all necessary rules and regulations governing the use and control of all municipal airports within the City of Los Angeles.' City Charter Art. XXIV, § 239. The provision goes on to state that 'said regulations shall be approved by the Council by ordinance which shall prescribe the penalties for the violation of such rules and regulations.' Section 239.2(1) states that the general manager of the airport department 'shall have the power and duty to enforce all orders, rules and regulations adopted by the Board.' The charter does not provide for the Board to pass *resolutions*, as it has in this case. Nor has the City Council ratified the Board's resolution.

Id. at 9 (emphasis in original).[04]

The court thus remanded the case to state court, *id.* at 10, where it is pending.

Subsequent to *ISKCON v. Los Angeles*, there is still no indication that the airport board has promulgated any rules and regulations as to the conduct of First Amend-

---

[04]The court added:

> Further evidence that there is not case or controversy 'of sufficient immediacy and reality to warrant the issuance of a declaratory judgment,' *Maryland Casualty Co.*, 312 U.S. 270, is found in the City's answer to ISKCON's complaint. The city states defendants, and each of them, deny that Resolution No. 13787 adopted by the Board has been enforced against the plaintiff or against anyone: [sic] ¶ 5, and 'defendants, and each of them, allege that pursuant to City Charter § 239 all rules must be approved by the City Council.' ¶ 6.
>
> The City does not substantively address this argument in its reply, except to cite the standard and to observe that ISKCON initiated the suit. That does not change the preceding analysis—the requirement of an actual controversy is jurisdictional and as such, can be raised by any party or the Court sua sponte at any time.

Id. at 9.

ment activities at the airport nor, as the court in *ISKCON v. Los Angeles* noted, has it sought or obtained approval of the resolution, by ordinance or otherwise, from the city council. Instead, the board has adhered to the original "resolution" that merely describes itself as "a general policy procedure." Resolution No. 13787. It is, accordingly, by no means clear that the existence of the resolution, without more, can serve to create a justiciable controversy.

B. The Present Case Is Nonjusticiable.

The facts upon which the district court and court of appeals apparently believed that a justiciable controversy existed do not, when reviewed in light of the history, described above, dispel the doubts which the history creates. The key element to the present case seems to be the stipulation that an "uniformed peace officer" at one time handed respondent Alan Snyder a copy of the resolution while Snyder was distributing free religious literature at the airport, "ordered Snyder to cease," and "further advised Snyder that any failure to comply . . . would subject Snyder to legal action by the City Attorney pursuant to the express terms of Resolution No. 13787." Stipulation of Facts, para. 69; Jt. App. 19a.

More questions are raised, however, than are answered by the stipulation. At the very least, and especially in light of the quoted passage from *ISKCON v. Los Angeles*, it appears that the airport board, by the express terms of section 239 of the City Charter[05] could not have taken

---

[05]The relevant portion of the City Charter is appended hereto as Appendix B.

legal action against respondents until the city council formally approved the resolution by promulgating it as a municipal ordinance, and prescribing the penalties for its violation. Thus, for aught that now appears, the action by the police officer was merely a bluff or hollow threat at best, and the "resolution" is a mere piece of paper that does not and cannot affect the legal rights of anyone.

In this posture, the dual components of *Abbott Laboratories* are plainly satisfied. First, because Resolution No. 13787 entails "uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." 13A C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 1352, at 112 (1984), the issues which petitioners raise are not fit for judicial decision.

In *Socialist Labor Party v. Gilligan*, 406 U.S. 583 (1972), for example, the Court refused, after other issues in the case had become moot, to review a constitutional challenge to a state requirement that all political parties seeking a position on the ballot must file a loyalty oath. The Court reasoned that "[n]othing in the record shows that appellants have suffered any injury thus far, and the law's future effect remains wholly speculative."[106]

---

[106] *Cf. Rescue Army v. Municipal Court of Los Angeles*, 331 U.S. 549 (1947) where the Court refused to review a California decision denying a claim under the Federal Establishment Clause because it was unable to determine with certainty how much of the challenged statute was implicated in the case: "[J]urisdiction . . . should be exerted only when the jurisdictional question presented by the proceeding . . . tenders the underlying constitutional issues in clean-cut and concrete form, unclouded by any serious problem of construction relating either to the terms of the questioned legislation or its interpretation by the state courts." *Id.* at 584.

Similarly, in *International Longshoremen's & Warehousemen's Union Local 37 v. Boyd*, 347 U.S. 222 (1954), the Court held that a federal court could not grant declaratory judgment on the constitutionality of a particular construction of a federal statute where the conduct had not yet occurred, and where the challenged construction had not yet been ratified by the federal agency charged with its administration and enforcement. In language particularly propos here, the Court stated: "Determination of the scope and constitutionality of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial function." *Id.* at 224.

The second component of *Abbott Laboratories* is satisfied because there is no realistic threat of actual enforcement of the resolution in its present form,[07] and because respondents and other groups have been actually proselytizing and distributing literature in LAX for many years without any untoward interference with airport operations. Consequently, there is no meaningful hardship to the parties of withholding court consideration until the controversy between them is more sharply defined.

In this regard, it has long been established as part of the "case or controversy" requirement of Article III that

---

[07]*See Babbitt v. United Farmworkers National Union*, 442 U.S. 289, 298 (1979) ("A plaintiff who challenges a statute must demonstrate a *realistic* danger of sustaining a direct injury as a result of the statute's operation or enforcement." (emphasis supplied); *cf. Younger v. Harris*, 401 U.S. 37, 42 (1971) ("persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs.")

an agency's "pronouncements, policies, and programs . . . d[o] not give rise to a justiciable controversy save as they ha[ve] fruition in action of a definitive and concrete character constituting an actual or threatened interference with the rights of the persons complaining." *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 324 (1936). Accordingly, in order for a contested action to be considered ripe for review, the impact on the parties must be "sufficiently direct and immediate as to render the issue appropriate for judicial review at this stage." *Abbott Laboratories*, 387 U.S. at 152.

In thus refusing to declare Connecticut's law prohibiting the use of contraceptives invalid, the Court in *Poe v. Ullman*, 367 U.S. 497 (1961), emphasized that "judicial power is to be exercised to strike down legislation, whether state or federal, only at the insistence of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action." *Id.* at 504. Of particular interest here, *Poe* noted that even the "existence of a state penal statute would constitute insufficient grounds to support a federal court's adjudication of its constitutionality in proceedings brought against the State's prosecuting officials if real threat of enforcement is wanting." *Id.* at 507.

If the existence of an unenforced penal statute was insufficient to raise federal jurisdiction in *Poe*, then surely an unenforceable agency resolution such as is in issue here should be insufficient to invoke federal jurisdiction

as well.[08] Indeed, Resolution No. 13787 has never been formally enforced against anyone since its passage in 1983, nor in its present form can it be.

Nor, in this context, can it be claimed that the resolution creates a "chilling effect" on First Amendment activities. As illustrated by *ISKCON v. Los Angeles*, this case is not the first instance where airport officials have presented the resolution to individuals exercising First Amendment rights at LAX, yet for all the hyperbole and excitation, the resolution remains unenforced and unenforceable.

Accordingly, there is no immediate, direct and significant hardship to the parties of withholding judicial consideration of the public forum question,[09] and the writ of

---

[08]In this regard, respondents are not faced with the dilemma of incurring the disadvantages of complying with the resolution or risking penalties for noncompliance, as were the challenging parties in such cases as *Doe v. Bolton*, 410 U.S. 179, 188 (1974), *Epperson v. Arkansas*, 393 U.S. 97, 100 (1968), and *Abbott Laboratories*, 387 U.S. at 152-53. Moreover, it is indisputable that no criminal action can be initiated. Nonetheless, the petitioners apparently contend that a case or controversy is created by the mere possibility of civil adjudication. This ground, however, is too remote, and does not satisfy the requirements of *Steffel v. Thompson*, 415 U.S. 452 (1974) where it is unknown how the state courts would treat such an action. Additionally, the mere *potential* of civil adjudication would expand the case or controversy requirement beyond any acceptable or manageable boundaries. *See Toilet Goods Association v. Gardner*, 387 U.S. 158, 164 (1967); *Alascom, Inc. v. F.E.C.*, 727 F.2d 1212, 1217 (D.C. Cir. 1984).

[09]At the very least, development of a more concrete set of facts is required. *See California Bankers Association v. Shultz*, 416 U.S. 21, 56-57 (1974); *Zemel v. Rusk*, 381 U.S. 1, 19-20 (1965). This is especially so in a freedom of expression context where "each medium of expression presents special First Amend-

(Continued on following page)

certiorari should be dismissed as improvidently granted for want of ripeness.

II.

A DECISION ON THE FEDERAL PUBLIC FORUM DOCTRINE WILL VIOLATE THE LONG ESTABLISHED RULE OF AVOIDING FEDERAL CONSTITUTIONAL ADJUDICATION WHERE NONFEDERAL GROUNDS FOR DECISION ARE AVAILABLE.

A. The Public, Non-rented Portions Of LAX Are A Public Forum Under Article I, Section 2 Of The California Constitution.[1]

Respondents, as well as other groups and individuals seeking to engage in expression in California facilities such as airports, have a right of access to the public, non-rented portions of LAX which is independent of federal public forum doctrine. The existence of such a right was asserted by the respondents at the onset of litigation against the petitioners, *see* Complaint, paras. 24, 26, and was argued extensively in both the district court, *see* Trial Brief Of Plaintiffs And Counterdefendants, at 39-45, and the Court of Appeals. *See* Appellee's Brief, at 6-18.

(Continued from previous page)

ment problems" *FCC v. Pacifica Foundation*, 438 U.S. 726, 748 (1978), "which must be assessed . . . by standards suited to it." *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 547 (1975). Courts must "assess[] the First Amendment interest at stake and weigh it against the public interest allegedly served by the regulation." *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 91 (1977) (quoting *Bigelow v. Virginia*, 421 U.S. 809, 826 (1975)). Moreover, "a particularized inquiry into the nature of the conflicting interests at stake . . . *beginning with a precise appraisal of the character of the ordinance as it affects communication*," *Metromedia v. City of San Diego*, 453 U.S. 490, 503 (1981) (plurality opinion) (emphasis supplied), is required. On the present record, such an analysis is plainly not possible.

Inexplicably, both courts ignored the California public forum issue, although federal courts are under a clear obligation to avoid deciding Federal Constitutional questions where nonfederal grounds for decision are available.

1. LAX Is A Public Forum.

Article I, section 2 of the California Constitution does not merely track the language of the First Amendment. Rather it is a "protective provision more definitive and inclusive than the First Amendment." *Wilson v. Superior Court*, 13 Cal.3d 652, 658, 532 P.2d 116, 120, 119 Cal.Rptr. 468, 472 (1975); *accord, Robins v. PruneYard Shopping Center*, 23 Cal.3d 899, 908, 592 P.2d 341, 346, 153 Cal.Rptr. 854, 859 (1979), *aff'd sub nom. PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980); *Gonzales v. Superior Court*, 180 Cal.App.3d 1116, 1122, 226 Cal.Rptr. 164, 168 (1986); *U.C. Nuclear Weapons Labs Conversion Project v. Lawrence Livermore Laborary*, 154 Cal.App.3d 1157, 1163-164, 201 Cal.Rptr. 837, 843 (1984).[10]

---

[10]Cal. Const. art. I, § 2 provides that "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." U.S. Const. amend. I states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances." Although the free speech provision of the California and Federal Constitutions are thus similar, "they are not the same." *Gonzales v. Superior Court*, 180 Cal.App.3d 1116, 1122, 226 Cal.Rptr. 164, 167 (1986).

Under the California Constitution, then, such facilities as stadia,[11] convention centers,[12] shopping centers,[13] prison grounds,[14] interior premises of state owned visitor's centers,[15] and major transportation terminals,[16] must be made available for the reasonable exercise of First Amendment rights. "To protect free speech and petitioning is a goal" of the highest order under the California Constitution, *Robins*, 23 Cal.3d at 908, 592 P.2d at 346, 153 Cal.Rptr. at 859, which may be overborne only if it is outweighed by substantial governmental interests in restricting expression at a particular time and place. *See Prisoners Union v. California Department of Corrections*, 135 Cal.App.3d 930, 938-41, 185 Cal.Rptr. 634, 638-40 (1982).

The seminal California decision, *In re Hoffman*, 67 Cal. 2d 845, 434 P.2d 353, 64 Cal.Rptr. 97 (1967), involved a fact situation closely analogous to the present case. In *Hoffman*, an anti-war group of approximately 15 persons sought access to the main entrance, lobby and patio areas of the Union Station railway terminal in Los Angeles in order to distribute leaflets and discuss their views with persons in the area. *Id.* at 847, 434 P.2d at 354, 64 Cal.Rptr.

---

[11] *Carreras v. City of Anaheim*, 768 F.2d 1039, 1045-046 (9th Cir. 1986) (Anaheim Stadium).

[12] *Id.* at 1046-047 (Anaheim Convention Center).

[13] *Robins v. PruneYard Shopping Center*, 23 Cal.3d 899, 592 P.2d 341, 153 Cal.Rptr. 854 (1975), *aff'd sub. nom. PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980).

[14] *Prisoners Union v. California Department of Corrections*, 135 Cal.App.3d 930, 185 Cal.Rptr. 634 (1982).

[15] *U.C. Nuclear Weapons Labs Conversion Project v. Lawrence Livermore Laboratory*, 154 Cal.App.3d 1157, 201 Cal.Rptr. 837 (1984).

[16] *In re Hoffman*, 67 Cal.2d 845, 434 P.2d 353, 64 Cal.Rptr. 97 (1967).

at 98. Although the City conceded that the leafleters "did not impede the flow of traffic to or from the station or interfere with the purchase or sale of tickets or the conduct of business by the restaurants, bar, or magazine and newspaper stand located on the premises," *id.*, they were nonetheless convicted of violating a city ordinance restricting their right to conduct such activities in a railroad station, and subsequently sought a writ of habeas corpus from the California Supreme Court on the basis that the ordinance unconstitutionally abridged their right of free speech. *Id.*

In granting the writ, Chief Justice Traynor recognized for the Court that "a railway station is like a public street or park. Noise and commotion are characteristic of the normal operation of a railway station. The railroads seek neither privacy within nor exclusive possession of their station." 67 Cal.2d at 851, 434 P.2d at 356, 64 Cal.Rptr. at 100.[17]

---

[17]Union Station in Los Angeles was described as follows: "It is spacious and open to the community as a center for rail transportation. It also houses a restaurant, a snack bar, a cocktail lounge, and a magazine stand. Not only passengers but friends and relatives of passengers may freely enter and use the facilities of the waiting room. Entry is also free to those who seek food or drink or magazines or newspapers." 67 Cal.2d at 847, 434 P.2d at 354, 64 Cal.Rptr. at 98.

If the railway station in *Hoffman* is a public forum based upon the above-described facts, then the interior public areas of LAX are public forums *a fortiori*. As in *Hoffman*, the interior terminal areas at LAX are spacious facilities open to the general public without restriction. Seventeen gift shops, 12 cocktail lounges, three snack bars, four duty-free shops, 16 insurance outlets, four American Express offices, six postal centers, five money exchanges, numerous car rental facilities, an ice cream

(Continued on following page)

More importantly, *Hoffman* articulated the test for determining whether a particular facility constitutes a public forum under the California Liberty of Speech Clause:

> The primary uses of municipal property can amply be protected by ordinances that prohibit activities that interfere with those uses. . . . First Amendment activities [cannot] be prohibited solely because the property involved is not maintained primarily as a forum for such activities.
>
> . . .
>
> [I]n the present case, the test is not whether petitioners' use of the station was a railway use but whether it interfered with that use.

Id. at 850-51, 434 P.2d at 356, 64 Cal.Rptr. at 100.[18]

Hoffman thus directly and unambiguously rebuts the contention that all expressive activities not directly related to air transportation and navigation may be entirely excluded from the terminal buildings of LAX.[19] Indeed,

---

(Continued from previous page)

shop, a barber shop, and a Christian Science reading room are interspersed throughout the eight existing terminals, and are accessible to the general public for no fee. Moreover, as many non-travelers use the various terminals as do actual travelers. Stipulation of Facts, paras. 4, 10; Jt. App. 7a, 9a.

[18]*Robins* makes it clear that *Hoffman* rested solidly on California law. 23 Cal.3d at 908, 592 P.2d at 347, 153 Cal.Rptr. at 859; *accord, Carreras,* 768 F.2d at 1044, n.8.

[19]*See also Wolin v. Port Authority,* 392 F.2d 83, 90 (2d Cir.) *cert. denied,* 393 U.S. 940 (1968) ("The Terminal Building is an appropriate place for expressing one's views precisely because the primary activity for which it is designed is attended with noisy crowds and vehicles, some unrest and less than perfect order. Like a covered marketplace area, the congestion justifies rules regulating other forms of activity, but it seems undeniable that the place should be available for use in appropriate ways as a public forum.") (footnote omitted).

in *People v. Fogelson*, 21 Cal.3d 158, 577 P.2d 677, 145 Cal. Rptr. 542 (1978), which concerned a facial overbreadth challenge to a City of Los Angeles solicitation ordinance applied to ISKCON's activities at LAX,[20] the California Supreme Court cited *Hoffman* in noting that the interior, public areas of municipal buildings such as LAX are "appropriate areas for exercise of protected activity." *Id.* at 167, n.9, 577 P.2d at 682, n.9, 145 Cal.Rptr. at 547, n.9.

The ongoing vitality and application of the compatibility test is also demonstrated by *Robins*, where the *Hoffman* formulation was cited with approval.

> Chief Justice Traynor's opinion made it clear that . . . 'the test is not whether petitioners' use of the station was a railway use but whether it interfered with that use.' . . . The opinion thus affirms that the public interest in peaceful speech outweighs the desire of property owners for control over their property.

23 Cal.3d at 909, 592 P.2d at 347, 153 Cal.Rptr. at 860.[21]

---

[20]Specifically, a member of ISKCON was arrested and convicted in Municipal Court of violating the solicitation ordinance, which the California Supreme Court ultimately found "unconstitutional on its face." 21 Cal.3d at 167, 577 P.2d at 682, 145 Cal.Rptr. at 547.

[21]A recent California public forum decision, *Prisoners Union*, also quotes this passage from *Hoffman*, 135 Cal.App.3d at 939, Cal.Rptr. at 639, and observes in addition that the precedential value of *Hoffman* "is not diminished by the fact that the opinion cited federal law. "*Id.* at 939, n.3, 185 Cal.Rptr. at 639, n.3. Indeed, "[k]eeping in mind that the free speech and petitioning provision in the California Constitution does not *mirror* the First Amendment either in form or content . . . we draw on both provisions for the analysis required in this state." *Lawrence Livermore Laboratory*, 154 Cal.App.3d at 1163, 201 Cal. Rptr. at 843. (emphasis in original) Accordingly, for state constitutional analysis, "[f]ederal principles are relevant but not

(Continued on following page)

Other recent cases also reflect the rejection of a categorical approach to the existence of public forums under California law. In *Prisoners Union*, the California court of appeal rejected a "categorical ban on communication among free citizens in a public parking lot, simply because the parking lot is located on prison property." 135 Cal. App.3d at 938, 185 Cal.Rptr. at 638 (footnote omitted). The nature of the facility was, of course, "relevant, but *not* determinative." *Id.* at 939, 185 Cal.Rptr. at 639 (emphasis supplied). Rather, in every case in which the propriety of expression is at issue, "the answer depends upon whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." *Id.*[22]

In *Lawrence Livermore Laboratory*, a case factually similar to the present case, the court of appeal expressly recognized that it was faced with another "dispute over

---

(Continued from previous page)

conclusive so long as federal rights are protected." *PruneYard*, 23 Cal.3d at 909, 592 P.2d at 346, 153 Cal.Rptr. at 859; *accord, Gonzales*, 180 Cal.App.3d at 1123, 226 Cal.Rptr. at 168 ("Federal law can provide guidance, even though it is not controlling in this area.").

[22]California decisions, moreover, leave no doubt that "[i]t is immaterial that another forum, equally effective," may be available to the respondents. *Hoffman*, 67 Cal.2d at 852 n.7, 434 P.2d at 857 n.7, 64 Cal.Rptr. at 101, n.7. Indeed, " . . . it is settled law that within the context of the traditional public forum, abridgment of the freedom of expression may not be conditional upon the existence of alternative channels of communication." *Sussli v. City of San Mateo*, 120 Cal.App.3d 1, 8, 173 Cal.Rptr. 781, 785 (1981). Hence, in the absence of "some conflicting interest that could be protected in no other way, [respondents] had the right to choose their own forum." *Id.*; *accord, Gonzales*, 180 Cal.App.3d at 1127, 226 Cal.Rptr. at 171; *see also In re Lane*, 71 Cal.2d 872, 457 P.2d 561, 79 Cal.Rptr. 789 (1969).

the proper analytical approach to free speech/public forum issues." 154 Cal.App.3d at 1165, 201 Cal.Rptr. In holding that an enclosed "Visitors Center . . . owned and operated by the government and open to the public at large" *id.* at 1168, 201 Cal.Rptr. at 876, had to be made available to non-governmental persons seeking to express their views, the court emphasized that the crucial question was not whether the place in question was a public street or park, or had been affirmatively dedicated to expression, but " 'whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time.' " *Id.* (quoting *Grayned v. City of Rockford,* 408 U.S. 104, 116, (1972)).

This conclusion was recently reiterated in *Carreras v. City of Anaheim,* 768 F.2d 1039 (9th Cir. 1985), which underscored that

> for the purposes of the California Liberty of Speech Clause, the 'public forum' doctrine is not limited to traditional public forums such as streets, sidewalks, and parks or to sites dedicated to communicative activity such as municipal theaters. Rather, the test under California law is whether the communicative activity 'is basically incompatible with the normal activity of a particular place at a particular time.'

Id. at 1045 (citations omitted).[23]

---

[23]Significantly, the court in *Carreras* acknowledged the district court's reliance on federal public forum analysis in finding that the exterior parking lots and sidewalks of Anaheim Stadium did not constitute a public forum. 768 F.2d at 1045, n.11. The court emphasized, however, that "[w]hatever the validity of this reasoning may be under federal law, it is not determinative under the California Liberty of Speech Clause." *Id.*

2. First Amendment Expression Is Compatible With The Intended Use Of LAX.

Under California law, then, LAX may be declared off limits to First Amendment expression "only if the City meets its burden of establishing the basic incompatibility between the expressive activity and the intended use of the facility." *Id.* Here, no such showing can be made.

Petitioners candidly admit that they are not aware "of any occasion on which a member of Jews for Jesus, . . . while engaged in the free distribution of religious literature in the interior walkways of LAX, . . . intentionally . . . interfered with, blocked, obstructed, physically touched in an offensive manner or otherwise . . . annoyed any other person." Stipulation of Facts, par. 63; Jt. App. 18a.

More importantly, the petitioners also admit that at the time he was asked to leave the airport premises while he was distributing his religious literature, respondent Avi Snyder "was not blocking any entrance, exit, stairway, escalator, elevator, door, or otherwise inhibiting the free flow of pedestrian traffic on the pedestrian walkway located inside Terminal 4 at LAX." Stipulation of Facts, par. 67; Jt. App. 19a. Nor was Snyder "touching, annoying, blocking, obstructing, or otherwise harassing any other person present in the immediate vicinity of his location." Stipulation of Facts, par. 68; Jt. App. 19a. Thus, there is absolutely no evidence in the record to indicate that the distribution of religious literature is in any way incompatible with the intended use of LAX. *See Carreras*, 768 F.2d at 1045-046.

Consequently, because public places such as LAX are undoubtedly "important facilit[ies] for public discussion,"

such facilities must constitute "a public forum that the citizen can commandeer." Kalven, *The Concept of the Public Forum*, Cox v. Louisiana, 1965 S.Ct. Rev. 1, 12.[24] Indeed, the basic guarantee of a meaningful system of freedom of expression is to assure this access, *see* T. Emerson, *Toward A Theory of the First Amendment* 19 (1966), and "the generosity and empathy with which such facilities are made available is an index of freedom." *Kalven, supra,* at 12.

The California Constitution vigorously protects this fundamental right. "Mere legislative preferences or beliefs regarding matters of public convenience may not support the diminution of such vital rights as the exercise of free speech in our democracy." *Gonzales,* 180 Cal.App.3d at 1122, 226 Cal.Rptr. at 167.

Hence, under California law, only if the city's legitimate interests in preserving the normal use of LAX can be vindicated "in no other way," *Hoffman,* 67 Cal.2d at 852, n.7, 434 P.2d at 857, n.7, 64 Cal.Rptr. at 101, n.7, may expressive activity be totally prohibited at the airport.

B. The District Court And Court Of Appeals Were Remiss In Deciding The Federal Constitutional Issue Prior To Considering California Public Forum Doctrine.

Hoffman and its progeny make clear that article I, section 2 of the California Constitution could have effectively

---

[24]For Amicus, at least, LAX is one of the few places "in which most of their fellow citizens can be found." *Lloyd Corp. v. Tanner,* 407 U.S. 551, 580-81 (1972) (Marshall, J. dissenting). Indeed, there is no other facility in Southern California that regularly accommodates such large numbers of people from various walks of life. In 1983, for example, LAX handled 33 million passengers, in addition to an equal number of "meeters" and "greeters." Stipulation of Facts, par.10; Jt. App. 9a. Accordingly, Amicus' need for access to this particular forum is incalculable.

provided a nonfederal state constitutional ground upon which to resolve the present controversy. Accordingly, regardless of whether the district court and court of appeals expressly addressed the California public forum question, which they should have, important policy concerns emanating from Article III of the Federal Constitution now require that the decision of the court of appeals be vacated and the case remanded with instructions to consider the state law question.

This result follows directly from the fundamental proposition that "[e]ven of cases unquestionably within this Court's subject-matter jurisdiction, we have disclaimed any pretension to reach federal questions arising under the Federal Constitution when an alternative basis of decision fairly presents itself." *Bender v. Williamsport Area School District*, 106 S.Ct. 1326, 1331 (1986) (No. 84-773); *accord, Jean v. Nelson*, 105 S.Ct. 2992, 2997 (1985) (No. 84-5240). Thus, "[p]rior to reaching any constitutional question, federal courts *must* consider non-constitutional grounds for decision." *Gulf Oil v. Bernard*, 452 U.S. 89, 99 (1981) (emphasis added).[25]

This rule is long-standing. In the seminal case of *Siler v. Louisville & Nashville R. Co.*, 213 U.S. 175 (1909),

---

[25]"It is a fundamental precept that federal courts are courts of limited jurisdiction" *Owen Equipment & Erection Co. v. Kroeger*, 547 U.S. 365, 374 (1978), which "have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Bender v. Williamsport Area School District*, 106 S.Ct. 1326, 1331 (1986) (No. 84-773). Consequently, "every federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,' even though the parties are prepared to concede it." *Id.*

the Court was faced with a variety of federal constitutional and state statutory challenges to an order of the Kentucky Railroad Commission fixing maximum railroad rates. In holding that the state questions should be decided first, and because these claims were dispositive the federal issues need not be reached, the Court articulated this rule:

> Where a case in this court can be decided without reference to questions arising under the Federal Constitution, that course is usually pursued and is not departed from without important reasons. In this case we think it much better to decide it with regard to the question of a local nature, involving the construction of the state statute and the authority therein given to the commission to make the order in question, rather than to unnecessarily decide the various constitutional questions appearing in the record.

Id. at 193.

Siler was cited with approval and incorporated by Justice Brandeis in his celebrated concurring opinion in *Ashwander,* which emphasized the importance of this policy as follows:

> The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. . . . Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law the Court will decide only the latter.

297 U.S. at 347.

In *Hagans v. Lavine,* 415 U.S. 528 (1974), the Court also relied upon *Siler,* and noted that it "has characteris-

tically dealt first with possibly dispositive state law claims pendent to federal constitutional claims." *Id.* at 546. The Court further pointed out that many other Supreme Court decisions "have stated the general proposition endorsed in *Siler*—that a federal court properly vested with jurisdiction may pass on the state or local law question without deciding the federal constitutional issues—and have then proceeded to dispose of the case solely on the nonfederal ground." 415 U.S. at 546, n.12.

Siler, therefore, "is not an oddity." *Id.* at 546. On the contrary, "[i]f there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Spector Motor Service, Inc. v. McLaughlin*, 323 U.S. 101, 105 (1944).

Recent cases, moreover, confirm the continued vitality of this rule. In *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283 (1982), for example, the Court declined to review a municipal ordinance prohibiting children under 17 years of age from operating amusement devices unless accompanied by an adult, where the Texas constitution potentially provided an independent ground for the court of appeals' judgment striking down the restriction.[26] The Court stated:

> Finally, and of greater importance, is this Court's policy of avoiding the unnecessary adjudication of federal constitutional questions. As we recently have

---

[26]*City of Mesquite*, like the present case, involved a municipal "regulation" that was challenged under both the state and federal constitutions. 455 U.S. at 291.

> noted, see *Minnick v. California Dept. of Corrections,* 452 U.S. 105, 101 S.Ct. 2211, 68 L.Ed.2d 706, this self-imposed limitation on the exercise of this Court's jurisdiction has an importance to the institution that transcends the significance of particular controversies. No reason for hasty decision of the constitutional question presented by this case has been advanced. If Texas law provides independent support for the Court of Appeals' judgment, there is no need for decision of the federal issue.

Id. at 294. (footnote omitted).

The two essential ingredients of the *Silers-Hagan-Mesquite* policy are thus present here. First, jurisdiction over the state constitutional claim properly exists pursuant to the well-established requirements for pendent jurisdiction outlined in *United Mine Workers v. Gibbs,* 383 U.S. 715, 725 (1966). Second, an unambiguous, nonfederal right exists under the California Constitution which amply supports the status of LAX as a public forum, independent of the Federal Constitution.[27]

Accordingly, the time-honored "federal policy of avoiding constitutional adjudication where not absolutely essential to disposition of a case," *Hagans,* 415 U.S. at 546, n.12, should not be violated, and instead, the lead established in *Mills v. Rogers,* 457 U.S. 291 (1982), should be followed. There, the Court considered the issue of "whether an involuntarily committed mental patient has

---

[27]This Court has many times noted: "Within our federal system the substantive rights provided by the Federal Constitution define only a minimum. State law may recognize liberty interests more extensive than those independently protected by the Federal Constitution." *Mills v. Rogers,* 457 U.S. 291, 300 (1982).

a constitutional right to refuse treatment with antipsychotic drugs." *Id.* at 298-99. The case arose in the federal court system, and approximately five months after the court of appeals issued its decision, and shortly after the Court granted certiorari, the Supreme Judicial Court of Massachusetts decided a case[28] involving "the right of a noninstitutionalized but mentally incompetent person to refuse treatment with antipsychotic drugs." *Id.* at 300-01.

Although the Massachusetts' decision involved the rights of noninstitutionalized patients, and *Mills* concerned institutionalized mental patients, the mere possibility that state law might "influence the correct disposition of the case at hand," *id.* at 302-03, persuaded the Court to vacate the judgment of the court of appeals and remand for consideration of the state law question.

At a minimum, this procedure should be followed here. As in *Mills*, so here too, California undoubtedly "recognizes liberty interests . . . that are broader than those protected by the Constitution of the United States." *Id.* at 303.[29] Thus, the protection that the Federal Constitution affords against the abridgement of the right to free expression will "not determine the actual substantive rights and duties of persons in the State of [California]." *Id.*

In this circumstance, a decision on the federal public forum issue will transgress "the Court's settled policy to

---

[28]*Guardianship of Roe*, 383 Mass. 415, 421 N.E.2d 40 (1981).

[29]*See PruneYard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980) (Supreme Court reasoning does not "limit the authority of the state to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution.").

avoid unnecessary decisions on constitutional issues,"[30] as well as "the prohibition against advisory opinions." *Id.* at 305.[31] Accordingly, the judgment of the court of appeals should be vacated and the case remanded for consideration of the state law question.[32]

—o—

CONCLUSION

The question of whether important regional facilities such as publicly owned and operated airports constitute public fora is an issue of substantial national significance.

---

[30]Amicus do not concede that LAX is not a public forum under federal law. On the contrary, as argued extensively in the respondents' brief, LAX *is* a public forum under federal law. However, because of the concerns raised herein, the federal question need not be decided at the present time.

[31]In *Mills*, the Court cited *United States v. Hastings*, 296 U.S. 188, 193 (1935), in noting that "review of one basis for a decision supported by another basis not subject to examination would represent 'an expression of abstract opinion.'" 457 U.S. at 305. This is precisely the situation here regarding the California and Federal public forum question.

[32]This procedure was followed in *City of Mesquite*, as well as in *Three Affiliated Tribes v. Wold Engineering*, 467 U.S. 138 (1984) (No. 82-629), where the Court vacated a decision by the North Dakota Supreme Court that apparently rested on an erroneous conception of federal law, and remanded to that court for clarification. Although *Wold* arose in the state as opposed to federal court system, the same policy concerns which are at issue here were raised there: "It is a fundamental rule of judicial restraint . . . that this Court will not reach constitutional questions in advance of the necessity of deciding them . . . . This Court has relied on that principle . . . to resolve doubts about the independence of state law decisions in favor of an interpretation that avoids a constitution question." *Id.* at 157-58 (citations omitted). This same "prudential rule" *id.* at 158, should be employed in the present case.

It is only prudent, therefore, that the resolution of such a question, which will have a direct impact on the types of public facilities that may be made available for the exercise of First Amendment rights, be made on the best possible facts and circumstances. Unfortunately, such facts and circumstances do not exist in the present case.

The inadequacy of the present record upon which to posit a federal public forum decision is attributable to two primary factors: (1) the speculative and unenforceable nature of Resolution No. 13787; and (2) the existence of a prominent, nonfederal right of access to LAX under article I, section 2 of the California Constitution.

Thus, the judgment of the court of appeals should be vacated and the case remanded with instructions that the present action be dismissed, or, in the alternative, to consider the state constitutional question.

Respectfully submitted,

David M. Liberman
9806 Washington Boulevard
Culver City, California 90232
(213) 204-0488

Attorney for Amicus Curiae International Society for Krishna Consciousness of California, Inc.

APPENDIX A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Filed June 29, 1984)

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA, INC., *Plaintiff,* vs. CITY OF LOS ANGELES, A CALIFORNIA MUNICIPAL CORPORATION; EMMETT C. McCAUGHEY, President of the Los Angeles Board of Airport Commissioners; ELIZABETH K. ARMSTRONG, Vice-President of the Los Angeles Board of Airport Commissioners; and JOHNNIE L. COCHRAN, JR., MARY LOU CUNNINGHAM, and SAMUEL GREENBERG, members of the Airport Commission, *Defendants.*	NO. CV 83-5229-ER CV 84-0045-ER (Consolidated) ORDER DISMISSING CASE NO. CV 84-0045 FOR LACK OF SUBJECT MATTER JURISDICTION AND REMANDING CASE NO. 83-5229 AS IMPROVIDENTLY REMOVED
CITY OF LOS ANGELES; THE BOARD OF AIRPORT COMMISSIONERS OF THE CITY OF LOS ANGELES, *Plaintiffs,*	

vs.)
)
THE INTERNATIONAL)
SOCIETY FOR KRISHNA)
CONSCIOUSNESS OF)
CALIFORNIA, INC.;)
INTERNATIONAL CAUCUS OF)
LABOR COMMITTEES; FUSION)
ENERGY FOUNDATION;)
SOLDIERS OF THE CROSS)
OF CHRIST; NATIONAL)
ANTI DRUG COALITION,)
)
Defendants.)
)
)

On June 11, 1984, the Motion for Summary Judgment of City of Los Angeles requesting declaratory and injunctive relief in both of the above-captioned consolidated matters came on for hearing. Robert C. Moest, attorney for the International Society for Krishna Consciousness, David L. Llewellyn, Jr., attorney for the Soldiers of the Cross of Christ; and Jeffrey S. Cohen, attorney for the Fusion Energy Foundation, National Anti-Drug Coalition and the International Caucus of Labor Committees opposed the City's Motion for Summary Judgment. James R. Kapel represented the City parties.

Upon consideration of the papers submitted by the parties, the file in this case, their oral argument, and its own research, this Court does not find it possible to reach the merits presented by the summary judgment motion. For the reasons set out below, this Court has determined that it does not have subject matter jurisdiction over Case No. 84-0056-ER. This Court does not have jurisdiction

over Case No. 83-5229-ER because there is no live controversy.

BACKGROUND

The first of the two consolidated cases was filed by the International Society of Krishna Consciousness ("ISKCON") against the City. It was filed in state court on July 18, 1983, removed to the federal court August 12, 1983, and a first amended complaint was filed October 24, 1983. The complaint alleges that a resolution passed by the Board of Airport Examiners forbidding "First Amendment activities by any individual and/or entity" at the Central Terminal Area of the Los Angeles International Airport ("LAX")[1] violates the first amendment of the federal constitution, § 1983, and article 1, §§ 2, 4, and 7 of the California constitution. Plaintiff seeks declaratory and injunctive relief. The City filed the second lawsuit against ISKCON, the International Caucus of Labor Committees, Fusion Energy Foundation, the National Drug Coalition, and the Soldiers of the Cross of Christ. The City seeks a declaration that the resolution is constitutional and that the listed defendants are violating the resolution, and an injunction forbidding them from violating the resolution in the future.

DISCUSSION

Does this Court have Subject Matter Jurisdiction Over the City's Suit for Declaratory and Injunctive Relief?

The City claims that this Court has federal question jurisdiction over its suit, pursuant to 28 U.S.C. § 1331 (1984). But a federal court does not have federal question jurisdiction over a case in which the plaintiff is suing

on a state law cause of action and the federal question only arises by way of the defendant's defense or by the plaintiff's rebuttal to the defendant's defense. Applying that principle to the present case, all that the City would need to prove in an affirmative suit would be that the defendant(s) violated a *state law*. That the law is constitutional would only come in as a response to defendant's objection that the state law is unconstitutional.

The Supreme Court recently dealt with this very issue.[2] *Franchise Tax Board v. Construction Laborers Vacation Trust*, — U.S. —, 103 S.Ct. 2841 (1983), the Court posed the question whether a suit for a declaratory judgment that a state law was consistent with ERISA arises under federal law and answered the question as follows:

> We think not. We have always interpreted what *Skelly Oil* called "the current of jurisdictional legislation since the Act of March 3, 1875," 339 U.S., at 673, 70 S.Ct., at 879, with an eye to practicality and necessity. "What is needed is something of that common-sense accommodation of judgment to kaleidoscopic situations which characterizes the law in its treatment of causation . . . a selective process which picks the substantial causes out of the web and lays the other ones aside." *Gully v. First National Bank*, 299 U.S., at 117-118, 57 S.Ct., at 99-100. *There are good reasons why the federal courts should not entertain suits by the States to declare the validity of their regulations despite possibly conflicting federal law.* States are not significantly prejudiced by an inability to come to federal court for a declaratory judgment in advance of a possible injunctive suit by a person subject to federal regulation. They have a variety of means by which they can enforce their own laws in their own courts, and they do not suffer if the pre-

> emption questions such enforcement may raise are tested there.

Id. at 2852 (footnotes omitted) (emphasis added).

The City's reply brief unintentionally supports the argument that it is not raising any federal question, except as a defense. The City states:

> There can be no doubt that the controversy between the parties arises out of the federal constitutional and statutory law as well as involving state issues. All of the defendants have claimed that they have federally protected rights to conduct their distribution and soliciting activities in the terminal facilities at LAX.

City's Reply Brief at 25-26.

The Court has not discovered, nor have the parties cited, a single case brought by a state, city or federal government seeking, before the law is enforced, a declaratory judgment that a law is constitutional, with the exception of *Muskrat v. United States*, 219 U.S. 346 (1911). *Muskrat* established the longstanding precedent that a federal court will not, before the law is applied, declare laws to be constitutional, because by doing so the court would issue advisory opinions.

The City contends that the consolidation saves it from dismissal. "The City's position as plaintiff in this second case, rather than as a Cross-Complainant joining other necessary and interested parties, is merely because the second, separate suit was the easiest way to bring all necessary parties before the Court." City's Reply Brief at 26. But, the other groups are not necessary parties for ISKON's (sic) suit that the resolution is unconstitutional as applied to ISKCON and on its face because only

ISKCON would be bound by the ruling if it were unfavorable.[3]

Consolidation poses neither a practical nor a theoretical problem. All the circuits which have considered the question have said that consolidated cases retain their separate identities. *Robinson v. Worthington,* 544 F. Supp. 949 (N. D. Ala. 1982) recites the applicable law:

> A review of the law concerning consolidation quickly disabused the Court of the notion that actions somehow lose their separate identity upon consolidation. The ruling of the Supreme Court in regard to consolidation prior to the adoption of Rule 42(a) is still regarded as authoritative:
>
> > "Consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of parties, or make those who are parties in one suit parties in another." *Johnson v. Manhattan Railway Co.,* 289 U.S. 429, 496, 497, 53 S.Ct. 721, 727, 77 L.Ed. 1331 (1933).
> >
> > "Thus the Courts hold that actions do not lose their separate identity because of consolidation."

Id. at 952 (citations omitted).

Therefore, the City's suit for declaratory and injunctive relief is dismissed for lack of subject matter jurisdiction for want of a federal question.

Does the Suit by ISKCON Raise a "Case of Controversy["] Such That This Court Possesses Jurisdiction?

The jurisdiction of federal courts is limited to the adjudication of "cases or controversies" by Art. III, § 2, of the Constitution. The Declaratory Judgment Act, 28 U.S.C. § 2201 aplies only to cases of actual controversy." Thus,

> "the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273, 61 S.Ct. 510, 512, 85 L.Ed. 826 (1941).

quoted in Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

The standard is heightened by the fact that the plaintiffs seek to have this Court declare the resolution unconstitutional and enjoin its enforcement.[4] In such a case, it is especially important that the Court is certain that there is an actual case or controversy between the parties, as the Supreme Court explained in *Poe v. Ullman*, 367 U.S. 497 (1961) (no case or controversy in suit seeking declaratory judgment on constitutionality of law banning sale of contraceptives when no indication that law would be enforced).

> These considerations press with special urgency in cases challenging legislative action or state judicial action or state judicial action as repugnant to the Constitution. "The best teaching of this Court's experience admonishes us not to entertain constitutional questions in advance of the strictest necessity." . . . *[f]ederal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action. . . . "This court can have no right to pronounce an abstract opinion upon the constitutionality of a State law. Such a law must be brought into actual or threatened operation upon rights properly*

> *falling under judicial cognizance, or a remedy is not to be had here.*

367 U.S. at 503 (citations omitted) (emphasis added).

The Supreme Court stated the mere existence of a panel statute constitutes insufficient grounds for an adjudication of its merit if "real threat of enforcement is wanting.["] *Id.* at 507. *See also Western Mining Council,* 643 F.2d at 627.

Furthermore, events can render moot actions which once presented a case or controversy. "Simply stated, a case is moot when the issues presented are no longer 'live' or when the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack,* 395 U.S. 486, 496 (1969). As the Supreme Court instructed the district court in *Ellis v. Dyson,* 421 U.S. 426 (1975):

> The district court will find it desirable to examine the current enforcement scheme in order to determine whether, indeed, there is now a credible threat that petitioners . . . might be arrested and charged with loitering. A genuine threat must be demonstrated if a case or controversy, within the meaning of Article III of the [C]onstitution and of the Declaratory Judgment Act, may be said to exit [sic]. . . . Further, the credible threat must be shown to be alive at each stage of the litigation.

421 U.S. at 434 (citations omitted).

ISKCON argues that there is no present case or controversy before this Court. Its amended complaint alleged that immediately after the resolution was passed, airport officials distributed copies of the resolution to ISKCON members and members of the public. While this may have created a case or controversy when this case was filed,

there is none now. ISKCON states that its members have not been harrassed by airport officials. Additionally, the Los Angeles City Charter provides that the airport board "shall have power. . . . to make and enforce all necessary rules and regulations governing the use and control of all municipal airports within the City of Los Angeles." City Charter Art. XXIV, § 239. The provision goes on to state that "said regulations shall be approved by the Council by ordinance which shall prescribe the penalties for the violation of such rules and regulations." Section 239.2(1) states that the general manager of the airport department "shall have the power and duty to enforce all orders, rules and regulations adopted by the Board." The charter does not provide for the Board to pass *resolutions*, as it has in this case. Nor has the City Council ratified the Board's resolution.

Further evidence that there is not case or controversy "of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Casualty Co.*, 312 U.S. 270, is found in the City's answer to ISKCON's complaint. The city states "defendants, and each of them, deny that Resolution No. 13787 adopted by the Board has been enforced against the plaintiff or against anyone: ¶ 5, and "defendants, and each of them, allege that pursuant to City Charter § 239 all rules must be approved by the City Council." ¶ 6.

The City does not substantively address this argument in its reply, except to cite the standard and to observe that ISKON initiated the suit. That does not change the preceding analysis—the requirement of an actual controversy is jurisdictional and as such, can be raised by any party or the Court sua sponte at any time.

This Court finds that the question whether the resolution violates the first amendment is not an actual case or controversy. There is not sufficient adversity between the parties to make determination of the federal constitutional question appropriate. This case was therefore improvidently removed and must be remanded to state court.

DATED: June 29, 1984.

/s/ Edward Rafeedie
United States District Judge

FOOTNOTES

1. The Board adopted the resolution July 13, 1983. It stated in pertinent part:

> NOW, THEREFORE, BE IT RESOLVED by the Board of Airport Commissioners that *the Central Terminal Area* at Los Angeles International Airport *is not open for First Amendment activities by any individual and/or entity:*
>
> BE IT FURTHER RESOLVED that the Central Terminal Area at Los Angeles International Airport is only to be used for the promotion and accommodation of air commerce and air navigation or uses incidental thereto unless the Board of Airport Commissioners makes the appropriate findings pursuant to Charter Section 238.8 that a portion of said area is not currently required for the promotion or accommodation of air navigation or uses incidental thereto; and
>
> BE IT FURTHER RESOLVED that after the effective date of this Resolution, *if any individual and/or entity seeks to engage in First Amendment activities within the Central Terminal Area* at Los Angeles International Airport, *said individual and/or entity shall be deemed to be acting in contravention of the stated policy of the Board of Airport Commissioners* in reference to the uses permitted within the Central Terminal Area at Los Angeles International Airport; and
>
> BE IT FURTHER RESOLVED that if any individual or entity engaged in First Amendment activities within the Central Terminal Area at Los Angeles International Airport, the City Attorney of the City of Los Angeles is directed to institute appropriate litigation against such individual and/or entity to ensure compliance with this policy statement of the Board of Airport Commissioners; and

> BE IT FURTHER RESOLVED if any entity or individual seeks to engage in First Amendment activities in the vicinity of the Central Terminal Area, those activities must be conducted only on the sidewalks in front of the ticketing buildings and in such a manner so as to not interfere with other persons.

(Emphasis added.)

2. The precise question in *Franchise Tax Board* was whether a case was properly removed from state court. The federal question analysis, however, is the same in both removed cases and cases originally brought in federal courts.

3. The procedural problems which would accompany the City's suit for a declaratory judgment support declining to issue such declarations. "All persons who have an interest in the determination of the questions raised in a declaratory judgment suit should be before the Court." *Diamond Shamrock Corp. v. Lumberman's Mutual Casualty Co.*, 416 F.2d 707, 710 (7th Cir. 1969). The City lists other organizations besides the five named defendants who requested permission to solicit at LAX, and the defendants have mentioned still more groups who they claim have solicited at LAX. These other groups would surely be interested parties in a case brought by the City to prove that the law is unconstitutional, yet they are not parties in this action. Including all interested parties would make this an unmanageable lawsuit. But, unless such groups are included, they would not be bound by the resolution of this case. Were the Court to find the resolution constitutional, this issue would have to be litigated again if the resolution were enforced against nonparties and they contested the constitutionality.

4. Were the City the party arguing that no controversy exists, the Court's determination could differ. When a defendant has enforced a statute in the past, or has reasonably threatened to enforce it, the defendant normally has a heavy burden showing that it will not enforce the law in the future. *See Rabinowitz v. Board of Junior College,* 507 F.2d 1255 (7th Cir. 1974). But here ISKCON—who brought the suit—states that it is not worried about prosecution, which strongly indicates that there is no case or controversy. Indeed, at oral argument the City's attorney stated that the City wanted a ruling on the constitutionality of the resolution and a determination whether LAX was a public forum before enforcing the resolution.

APPENDIX B

ARTICLE XXIV
DEPARTMENT OF AIRPORTS

(Formerly entitled, "Department of Trusts"; repealed, and new article added, 1947.)

Sec. 238. There is hereby established a Department of Airports (hereinafter in this article referred to as the Department) to be under the management and control of a board of five commissioners to be known as the Board of Airport Commissioners (hereinafter referred to as the Board), to which the provisions of Article VI of this charter shall apply insofar as applicable. (Added, 1947.)

Sec. 238.1. (Repealed, 1973.)

Sec. 238.2. (Repealed, 1973.)

Sec. 238.3. Such department shall have control of its own revenues or funds, and expenditures of all bond funds relating to its facilities or activities. (Added, 1947.)

Sec. 238.4. The Board shall have possession, management, charge, superintendence and control of all airports, airport sites, and all equipment, accommodations and facilities for aerial navigation, flight, instruction and commerce belonging to or pertaining to this city; and such other property as it may acquire or which shall be placed under its control. (Added, 1947.)

Sec. 238.5. The Board shall fix, regulate and collect rates or charges for the use of all buildings, grounds, facilities, utilities and structures, which are owned, controlled or operated by the city in connection with or for the promotion or the accommodation of air commerce and air

navigation; and for services in connection therewith. (Added. 1947.)

Sec. 238.6. The Board shall regulate and control all concessions, public service and public utilities operated upon or in any airport under its control in connection with, or for the promotion of air commerce or air navigation, or in connection with the municipal facilities therefor, and shall fix the fees to be paid to the city by any person, firm, or corporation operating any such public service or utility; and shall fix and regulate the toll or rates to be charged or collected for services furnished by any such public service or utility. The Board shall have the right, at all reasonable times, to have access to examine the books, papers, maps, and records showing the affairs, transactions, property, and financial condition of such persons, firms or corporations, which said examination may be made by the members of the Board, examiners of the Board, or any other duly authorized representative; and to require reports respecting such matters from such persons, firms or corporations at such times and in such form as the Board may prescribe. The Board by order, subject to approval, change or modification by the Council by ordinance, may fix the amount of license fees to be paid to the city by any such person, firm or corporation operating any such public service or utility, and the rates or terms to be charged and collected for commodities or services furnished or supplied by such public service or utility. (Added. 1947.)

Sec. 238.7. The Board shall have the power to purchase, lease, acquire, design, erect, maintain, improve, repair and operate all such property, improvements, utilities, equipment, supplies, machinery, aircraft, watercraft, vehicles, appliances, or facilities as it may deem necessary

or convenient for the promotion and accommodation of air commerce and air navigation; for manufacture or repair of devices therefor; or for use in connection therewith. (Added 1947)

> Construction and leasing of hangars on a municipal airport to private persons and corporations for manufacturing and other work on aircraft is not the use of public funds for a private purpose in violation of Article I, Section 14 of the State Constitution.
> *Pipes v. Hilderbrand,* 110 Cal. App. (2d) 645, 648.

Sec. 238.8. The Board shall have power to grant franchises, permits and licenses to, and to enter into leases with, any person, firm or corporation, or agency of the government for the use of any municipally owned or controlled airport or any part of facility thereof, for the promotion and accommodation of air commerce and air navigation, or use incidental thereto, together with the right to use said airport in common with others as necessary to the right granted. (Amended, 1951.)

The Board shall likewise have power to enter into leases with any person, firm or corporation for purposes other than for the promotion and accommodation of air commerce and air navigation covering any portion of the airport property whenever the Board shall determine that the use of such portion of the Airport property is not necessary for the promotion and accommodation of air commerce and air navigation or use incidental thereto. (Added, 1951.)

Sec. 238.9. All such franchises, permits, licenses and leases shall be granted and entered into subject to such terms and conditions and such rentals or compensation as

the Board in its discretion may prescribe. Every such franchise, permit, license or lease granted or entered into for a definite period of time shall be made by order and if made for a period of five (5) years or less such order shall be published once in the same manner as ordinances of the City, and shall take effect upon such publication. If made for a longer period than five years the same shall be submitted to the Council for its approval or disapproval. Action must be taken thereon by the Council within sixty (60) days after such franchise, permit, license or lease shall have been submitted to it. If the Council shall approve the same, the order granting such franchise, permit, license or lease shall thereupon be published once in the same manner as ordinances of the City; if the Council shall fail to disapprove any such franchise, permit, license or lease within said period of sixty days, the order granting such franchise, permit, license or lease shall thereupon be published once in the same manner as ordinances of the City. Every such order granting a franchise, permit, license or lease for a period of time greater than five years shall, before the same becomes effective, be subject to the referendum provisions of this charter relating to ordinances. (Amended, 1983.)

No such franchise, permit, or license shall be made for a term or period greater than fifty (50) years, nor shall any such lease be made for a term or period greater than the term permitted by state, or for ninety-nine (99) years, whichever is less, and any such franchise, permit, license, or lease shall be subject to a readjustment of the rental compensation at least every ten (10) years during the term thereof upon such procedure as shall be prescribed in the instrument granting such franchise, permit, license or lease. (Amended, 1983.)

Secs. 238.10-238.11 Inclusive. (Repealed, 1951.)

Sec. 239. The Board shall have power and it shall be its duty, subject to the powers of the United States respecting commerce, to make and enforce all necessary rules and regulations governing the use and control of all municipal airports located within the City of Los Angeles, or upon any of its property wherever located, and the use of airways and waterways proximate thereto incident to aerial navigation. Said regulations shall be approved by the Council by ordinance which shall prescribe the penalties for the violation of such rules and regulations.

Such regulations may embrace but are not limited to:

(a) The ascent, landing, mooring, movement, maintenance, operation or use of all apparatus for aerial navigation and flight, or convenient or necessary in connection therewith.

(b) The design construction, maintenance, use, condition and operation of all and any utility, machine, building, structure, improvement or appliance on any airport under its jurisdiction; and control of excavation, obstructions and traffic on or in said airports. (Sec. added, 1947.)

Sec. 239.1. (Repealed, 1973.)

Sec. 239.2. The general manager of the Airport Department, in addition to the powers and duties which are or may be conferred upon him as elsewhere provided in this charter, shall have the power and it shall be his duty: (Added, 1947.)

(1) To enforce all orders, rules and regulations adopted by the Board relating to the regulation, operation

or control of the funds, facilities, properties and apparatus of said department; (Added 1947.)

(2) To supervise and manage the design, construction, maintenance and operation of all work or works authorized or ordered by the Board and to that end the Board shall have power to delegate to him such necessary powers and duties as are by this charter conferred upon said Board. (Added, 1947.)

Sec. 239.3. The general manager shall have power to designate and assign space for the use of aircraft at any airport owned, controlled or operated by the city, at the duly established rates or charges for the use of such municipal facilities and subject to the rules and regulations governing the same; and to designate and assign space in any warehouse, shop, field, runway, hangar or like facility operated by the city at the duly established rates or charges for the use of such municipal facilities and subject to the rules and regulations governing the same. Every such assignment of space shall be in writing and shall reserve to the city the right to use such space or facility for general airport or other purposes when such space is not required for the use of the permittee or lessee. (Added, 1947.)

Sec. 239.4. Every such assignment of space shall be revocable by the general manager without compensation to the lessee or permittee upon due notice to be stated therein, such notice in no case to exceed one year. (Added, 1947.)

Sec. 239.5. Whenever it shall be determined by the Board by order that certain parts of any airport owned, operated or controlled by the city may not be required at such time for use in connection with, or for the promotion

and accommodation of air commerce and air navigation, the general manager shall have power to issue revocable permits to use limited portions of such space for any and all purposes which shall not interfere with air commerce or air navigation and not inconsistent with any trust upon which such land may be held by the City of Los Angeles. Every such permit shall first be approved by the Board and shall prescribe that it shall be revocable, without compensation to the lessee or permittee, upon due notice to be stated therein, such notice in no case to exceed one year. (Added, 1947.)

Sec. 239.6. Every such assignment of space or revocable permit shall be made in writing or printing which shall set forth the terms and conditions thereof. (Added, 1947.)

Sec. 239.7.

The Board shall have power to order and contract for the expenditure of all money derived from the sale of bonds of the City issued for airport improvements, and of all money in the Airport Revenue Fund. Whenever the Board shall have approved and authorized any work or improvement, and shall have appropriated the necessary money therefor, the general manager shall have power to let any necessary contract in connection with such work or improvement. In cases of emergency where the circumstances render it impossible to secure bids for the furnishing of labor or materials without undue delay or loss to the City, the general manager may, with the approval of the Board, let such contract without advertising for bids. (Amended, 1977.)

Notwithstanding any other provision of this Charter, the requirement for security deposits including surety bonds and faithful performance bonds and annual bid bonds as prescribed elsewhere in this Charter may, in the general manager's discretion, be omitted when letting contracts for purchases of materials, supplies and equipment, and for the rental, repair and maintenance thereof. (Sec. title deleted, 2nd par. added, 1982.)

Sec. 239.8. Airport Revenue Fund.

There is hereby established the Airport Revenue Fund, the depository for which shall be the City Treasury. Said fund shall be exempt from the provisions of Section 382 of this Charter and shall be maintained separate and apart from all other funds and accounts in the City Treasury. The Airport Revenue Fund shall consist of: (a) all funds, moneys, securities, credits and other evidences of indebtedness in the present Airport Fund and all

* * *